

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GREGGORY KEARSE,

Plaintiff,

Case # 19-CV-1579-FPG

v.

DECISION AND ORDER

THOMAS AINI, et al.,

Defendants.

Plaintiff Gregory Kearsse brings this civil rights action against, *inter alia*, Defendant Lucinda Davis, challenging the custodial arrangements provided for his children after his arrest in June 2018. *See generally* ECF No. 1. On March 4, 2020, Plaintiff filed a motion for leave to file a late notice of claim. ECF No. 10. On March 30, 2021, Davis moved to dismiss the claims against her, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 29-3. On January 31, 2023, Magistrate Judge H. Kenneth Schroeder, Jr. filed a Report & Recommendation (“R&R”) recommending that Plaintiff’s motion be denied without prejudice and that Davis’s motion be denied. ECF No. 43. As to Plaintiff’s motion, Judge Schroeder recommended that, “to the extent that plaintiff’s second amended complaint could be construed as raising pendent state claims, any such claims [should] be dismissed without prejudice to reinstatement should plaintiff obtain leave to file a late notice of claim from the appropriate state court.” *Id.* at 7. No objections have been filed.

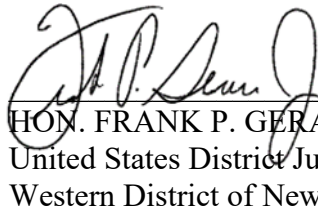
Generally, a court reviews portions of an R&R to which a party makes specific objections *de novo*. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). When a party does not object to the R&R, however, the court will review it for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017). “When performing such a clear error review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation.” *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 686 (N.D.N.Y. 2015) (internal quotation marks omitted). After conducting the appropriate review, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

The Court has reviewed Judge Schroeder’s R&R for clear error and finds none. Accordingly, the Court ADOPTS Judge Schroeder’s R&R (ECF No. 43), DENIES WITHOUT PREJUDICE Plaintiff’s motion to file a late claim (ECF No. 10), and DENIES Davis’s motion to dismiss (ECF No. 29). To the extent that Plaintiff’s second amended complaint could be construed as raising pendent state claims, any such claims are dismissed without prejudice to reinstatement should he obtain leave to file a late notice of claim from the appropriate state court.

IT IS SO ORDERED.

Dated: March 23, 2023
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge
Western District of New York